

Application No. 09/678,783

October 31, 2005

Reply to office action of August 22, 2005

### Remarks/Arguments

Applicant gratefully acknowledges the thorough Examination to date and has made an effort to fully respond to all the issues raised by the Examiner. Applicant has taken care and believes that no new matter has been introduced by way of this amendment. Reconsideration of the application in view of the above amendments and following remarks is respectfully requested.

### Rejection of Claims 12-14 under 35 USC 102(b)

The Examiner has rejected Claims 12-14 under 35 USC 102(b) as being anticipated by U.S.P.N. 5,793,976, issued to Chen. The Examiner states:

"Regarding claim 12, in accordance with Chen reference entirety, Chen discloses a method of determining performance ("*packet delay*" pertaining Fig. 2-3 and "*packet loss*" pertaining Figs. 4-5) of a route in a network (Figs. 2-5) (see abstract pertaining cumulative delay along a virtual connection or col. 7, lines 2-3; "*track the performance of each node along the virtual connection*") comprising:

- a) determining a source network object (Fig. 2; *NODE1*);
- b) determining a destination network object (Fig. 2; *NODE3*);
- c) determining a route (virtual connection) through the network (Fig. 2) from the source network object (Fig. 2; *NODE1*) to the destination network object (Fig. 2; *NODE3*);
- d) measuring the network performance (delay) of each node object on the route (col. 7, lines 23-24 and *thereinafter*); and
- e) aggregating the network performance obtained in step d) to obtain a total network performance for the route (col. 8, lines 41-48 and *thereinafter*)."

"Regarding claim 13, in addition to features recited in base claim 12 (see rationales discussed above), Chen further discloses wherein said network

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performance is that of a packet's delay through said network element and said total network performance for the route is the total end to end delay for a packet traversing said route (virtual connection) (*col. 7, lines 20-27; col. 8, lines 41-48 and thereafter*)."

"Regarding **claim 14**, in addition to features recited in base claim 12 (see rationales discussed above), Chen further discloses wherein said network performance is that of a network element's drop rate of packets (packet loss) and said total network performance is the end to end transmission fraction (total cell loss) over a path (virtual connection) (*col. 10, lines 1-2 and thereafter*)."

Applicant has amended Claim 12 to incorporate the limitations of Claims 14 and 15, and Claims 14 and 15 have now been cancelled. As the subject matter of Claim 15 is deemed allowable, Claim 12 and subsequently Claim 13 now include allowable subject matter. Applicant believes that the outstanding rejection, under 35 U.S.C. 102(b) has now been overcome.

Examiner is advised that an Information Disclosure Statement has been filed today under separate cover.

#### Conclusion

Applicant has made an effort to substantially eliminate any unclear details within the claims and believes that no new matter has been entered during this process. The 35 U.S.C. 102(b) rejection has also been overcome by way of the amendments made above. Applicant respectfully submits that all of the claims presently standing in the application are patentably distinguished from the teachings of all references of record either taken alone or in any combination. Accordingly, reconsideration and allowance of this application is respectfully solicited.

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Should any further fees or payments be necessary for entry of this amendment and further prosecution of this application, the undersigned hereby authorizes the Commissioner to debit and/or credit our Deposit Account No. 16-0600.

Respectfully Submitted,

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